

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - TE/GE, Room 7008 -  
Cincinnati, OH 45201

Date: MAY 27 2003

Employer Identification Number:  
[REDACTED]

Person to Contact - I.D. Number:  
[REDACTED]

Contact Telephone Numbers:

( [REDACTED] ) Phone  
[REDACTED] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations.

The evidence presented shows that the corporation was incorporated pursuant to [REDACTED].

The Articles of Incorporation state that the corporation was incorporated for the charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code. The Articles of Incorporation further state the specific purpose is "to provide (a) low-cost access to telecommunication programs and (b) leadership in guiding technology policy and standards for public and private non-profit colleges, universities, schools, organizations, and agencies and public entities of all types throughout the United States and Elsewhere".

The Articles of Incorporation, Article III, indicate that the corporation is organized on a membership basis. It further states that the corporation will receive dues from its members and receive compensation for providing services.

The Bylaws, Article III, indicates that the corporation shall be govern and controlled by a board of directors. Each board member shall be comprised of one appointed representative from each founding member.

The Founding members of the corporation include the following organizations:

- [REDACTED] A [REDACTED] association of nonprofit organizations
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Participating Members of the corporation may include any public or private non-profit college, university, school, organization, agency and public entity that is located within the regions of the five Founding members. [REDACTED] will automatically be included as Participating Members. You have proposed to change your By-laws to include only [REDACTED] members that are exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. Participating Members will be represented by a Founding Member. All Participating Members will be non-voting. The bylaws further state that Participating Members of the corporation will also be non-voting members (unless from [REDACTED]) of [REDACTED] and can participate in [REDACTED] programs as well as the corporation programs. Participating members pay yearly membership due of \$[REDACTED].

The information on Schedule #1 submitted with application Form 1023 states that the goal of the corporation is to help make available superior quality, affordable telecommunications services to both public and private non-profit entities such as colleges and schools.

The primary activity of the corporation is to develop [REDACTED]'s [REDACTED] for low cost telecommunications services. The corporation's literature indicates that these telecommunications services are long distance voice telecommunications, calling card services, video delivery, wireless communications, network and Internet delivery services and computer hardware and services. Vendors with the best proposal enter in agreements with the Corporation to offer high quality products at affordable costs to the corporation's membership.

To provide these services for members, the corporation entered in an agreement with [REDACTED] (a [REDACTED], a for profit entity. [REDACTED] serves as a Program Administrator and negotiates contracts for members with vendors per an agreement with the corporation. The agreement allows [REDACTED] to manage the corporation's telecommunications services program, exclusively. [REDACTED] is responsible to manage the [REDACTED] processes by identifying, negotiating and endorsing commercial providers. This includes entering into cooperative purchasing agreements relative to the corporation Agreement with its Participating Members.

An administrative service fee will be included in the price of all services purchased by the corporation's Participating Members. The administrative services fee will be paid directly to the Program Administrator by vendors in accordance with the respective agreements between the Program Administrator and the vendors. The agreement expires on [REDACTED], but can be terminated sooner if a party defaults and the defaulting party fails to cure the default following sixty day's notice.

FIN: [REDACTED]

You indicated in your letter of [REDACTED], that this Agreement was not the result of a competitive bidding process. [REDACTED] was chosen because of its relationship to a Founding Member. After considerable research, it was determined that no other entity providing a similar service for non-profit organizations on a national basis. In addition, these services are provided for a nominal fee (\$[REDACTED].00 per year) to the Participating Members.

Your secondary activity is to initiate promotional and marketing activities to and with members. The purpose of promotional activities was to inform eligible entities about cost-savings opportunities. The marketing activities are to improve the telecommunications knowledge, understanding and capabilities of its memberships.

The sources of financial support for the Corporations included the following:

- Payment from the Program Administrator in each fiscal year an amount equal to [REDACTED]% of the program volume to the extent that it exceeds \$[REDACTED] in any fiscal year. This payment shall not be less than \$[REDACTED] in any fiscal year.
- Memberships dues
- Gifts from the founding members of the Corporation

Based upon your proposed sources of support, you claimed status as an organization described in Section 509(a)(2) of the Code.

Our letter dated [REDACTED], we asked how your corporation qualified for exemption under section 501(c)(3) since your activities were providing services to unrelated organizations.

Your response of [REDACTED] indicated you did qualify for exemption under sections 501(c)(3) for the following reasons:

- 1) The corporation activities did not consist solely of negotiating vendor discounts for telecommunication services but per similarly situated institutions to discuss and solve common problems.
- 2) The corporation enhances learning experiences for students by using technology to remove barriers that may be present due, for example, to the remote location of a facility or its students.
- 3) Participating members receiving these services are themselves tax-exempt, and can be loosely grouped as educational, health care, religious or governmental entities.
- 4) Services provided are broad in scope. Members receive assistance in

dealing with common telecommunication problems, evaluating new products and services, training support staff and procuring low-cost state-of-the-art voice, data and video telecommunications services.

- 5) Services provided by the corporation to members are not available commercially and the fee paid is nominal.

The letter of [REDACTED] discussed in great detail, why the activities do not consist solely of negotiating vendor discounts for telecommunication services. The corporation's activities allow institutions to discuss and solve common problems. The corporation also directly enhances learning experiences for students by using technology to remove barriers that may be present. Furthermore, the services provided are broad as Participating members receive assistance in dealing with common telecommunication problems, evaluating new products and services, training support staff and otherwise procuring low-cost state-of the art voice, data and video telecommunications services. These services are a coordinated effort to assist colleges, universities and schools to better the learning environment for all involved.

In our letter of [REDACTED], we asked to provide the total percentage of time and resources devoted to each of your activities since you contacted to [REDACTED], to administer all of your services and how this service directly furthers an exclusively charitable purpose within section 501(c)(3). We also asked, how was providing services to non-501(c)(3) organizations were furthering an exempt purpose.

We also asked how you determine that any compensation received by [REDACTED] is reasonable and does not result in a substantial private benefit to them.

In your letter of [REDACTED], you discuss why the primary activity of the corporation to develop [REDACTED] for members and purchasing low cost telecommunications services as a cooperative was in error. You indicated the corporation is establishing, implementing and evaluating an efficient means for educational organizations to educate their students beyond the traditional classroom setting. That all activities described in your contract with [REDACTED] are charitable, rather than a commercial purpose. You further clarify that the corporation will do the following:

- a) Establish a nationwide collaborative for the purpose of making superior quality and affordable telecommunications services universally available to public and private non-profit colleges, universities, schools, organizations, agencies and public entities (Eligible Organizations) in service of the public good;
- b) Provide unique cost-savings, benefits and opportunities to Eligible Organizations of all sizes and in locations throughout the nations;
- c) Improve telecommunication knowledge, understanding and capabilities

Zof members;

- d) Implement effective procedures for identifying, compiling, and acting upon telecommunications needs of the non-profit sector; and
- e) Provide leadership in guiding technology policy and standards by investigating and presenting the education industry's requirements and by collaborating with other national and regional organizations.

You agreed to limit your members to organizations exempt under section 501(c) (3) only.

You stated that safeguards are built into the [REDACTED] process to make sure that the private benefit requirements of Code section 501(c) (3) are satisfied. The evaluation committees made up of representative from the Founding Members forward their recommendation and they choose whether to approve those recommendations.

You claimed that you did make inquiries of other service providers other than [REDACTED] which furnished bidding services only, not the full range of services provided by [REDACTED] and you concluded the fees received by [REDACTED] are comparable.

In your letter of [REDACTED] you indicated the corporation is improving education by integrating technology with the delivery of educational programs to tax exempt institutions and this is directly related to furthering education. You concluded that the corporation resembles Council for Bibliographic and Information Technologies, Inc v. Commissioner, 63 TCM 3186 (1992) and is operating for an exempt purpose.

Section 501(a) of the Code recognized certain organization as exempt from Federal Income Tax.

Section 501(c) (3) of the Code provides for the exemption from Federal Income Tax of organizations organized and operated exclusively for charitable, religious, educational and scientific purposes.

Section 502(a) of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 513(a) of the Code defines the term "unrelated trade or business" to mean any trade or business the conduct of which is not substantially related (aside from the need for income) to the exercise or performance of the organization's exempt purpose or function that constitutes the basis for its exemption under section 501.

Section 513(c) of the Code provides that the term "trade or business" includes any activity which is carried on for the production of income from the sale of goods or the performance of services. An activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities, or within a larger complex of other endeavors which may, or may not, be related to the organization's exempt purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization must be organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described in such section. If an organization does not meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i)(a) of the Regulations states that in order for an organization to be considered organized exclusively for exempt purposes it must limit its purposes to one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. It includes relief of the poor and distressed, the advancement of religion, the advancement of education and lessening the burdens of government.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that in general an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

Section 1.502-1(a) of the regulations provides that in determining the primary purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501.

Section 1.502-1(b) of the regulations provides, in part, that a subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business if regularly carried on by the parent organization. For example a subsidiary organization, which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its exempt purposes would be exempt. However, the subsidiary is not exempt from tax if it is operated primarily for the purpose of furnishing electric power to consumers other than its parent organization. Similarly, if the organization is owned by several unrelated exempt organizations, and is operated for the purpose of furnishing a service to each of them; it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations. Organizations are related for the purposes of section 1.502-1(b) if they consist of a parent organization and one or more subsidiary organizations, or subsidiary organizations having a common parent organization. Further, exempt organizations are not related merely because they engage in the same type of exempt activities.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct. D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization. "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L.Ed. 2d 368 (1988), the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court held that an organization providing consulting services to non-profit organizations at not less than the organization's cost was not operated exclusively for exempt purposes. The consulting services were directed at basic and applied research for the organization's non-profit clients. In sustaining the Service's determination that the organization was operated for a substantial non-exempt commercial purpose, the court found that petitioner's sole activity, selling consulting services to exempt and other non-profit organizations, was the conduct of a business which ordinarily is conducted by commercial ventures for profit. The organization's only role was that of a conduit linking individual researchers with the interested

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organizations seeking a substitute to full-time staffing, a roll not inherently charitable, educational, or scientific.

In Chart, Inc. v. United States, 491 F. Supp 10 (Dist.D.C.1979), rev'd 652 F.2d 195 (D.C. Cir. 1981), an organization providing shared electronic data processing for tax exempt, non-profit member hospitals was determined to be exempt under section 501(c)(3). The court reasoned that the services being provided were an integral part of the hospitals' activities and were highly specialized services for which there were no commercial counterparts.

In Council for Bibliographic and Information Technologies v. Commissioner, 1992 T. C. Memo 364 (1992), the Tax Court held that an organization performing various cataloguing activities for member libraries that were not structurally related was exempt under section 501(c)(3) of the Code. The court determined that the cataloguing activities bore such a close and intimate relationship to the function of the members' libraries, that they were "essential" to their operations and thus furthered the educational purposes of the libraries themselves. In short, they were the essence of running a library.

In Nonprofits' Inc. Alliance v. United States, 38 Fed. Cl. 277 (1994) the court denied exemption under section 501(c)(3) of the Code to an organization which provided insurance to its members who were not organizationally related. The court found such services to be administrative in nature and available commercially. Accordingly, the activities were considered unrelated trade or business and exemption was precluded. The court addressed the question of whether the plaintiff's activities are indispensable and necessary to its nonprofit members as follows:

The focus in these cases centers on whether the organization applying for exemption provides services both that are integral to the daily functioning of the member organizations and that advance the reason for which the member organizations qualify as exempt organizations.

In Redlands Surgical Services, v. Commissioner, 113 T.C. 47 (1999), the Tax Court held that a nonprofit wholly owned subsidiary of Redland Healthy Systems (a 501(c)(3) organization) operated for impermissible private benefit when it ceded effective control over partnership operations to private parties who had no requirement to operate exclusively for purposes described in section 501(c)(3). The organization's sole activity was participating as co-general partner with a for-profit corporation in a partnership that owned and operated an ambulatory surgery center. An affiliate of the for-profit partner was the manager of the surgical center. It received a 6% management fee under the management agreement. The court closely examined the structure of the relationships among the parties and stated:



Clearly there is something in common between the structure of the petitioner's sole activity and the nature of petitioner's purpose in engaging in it. An organization's purposes may be inferred from its manner of operations; its "activities provide a useful indicia of the organization's purpose or purposes." Living Faith, Inc. v. Commissioner, 950 F/2d 365 (7<sup>th</sup> Cir. 1991), affd, T.C. Memo. 1990-84. The binding commitments that petitioner has entered into and that govern its participation in the partnerships are indicative of petitioner's purposes. To the extent that petitioner cedes control over its sole activity to for-profit parties having an independent economic interest in the same activity and having no obligation to put charitable purposes ahead of profit-making objectives, petitioner cannot be assured that the partnerships will in fact be operated in furtherance of charitable purpose. In such a circumstance, we are led to the conclusion that petitioner is not operated exclusively for charitable purposes... nothing in the General Partnership agreement, or in any of the binding commitments relating to operation of the Surgery Center, establishes any obligation that charitable proposes be put ahead of economic objectives in the Surgery Center's operations. The General Partnership agreement does not expressly state any mutually agreed-upon charitable purposes or objective of the partnership.

Rev. Rul. 69-528, 1969-2 C.B. 127, holds that an organization that is regularly carrying on an investment service business is not exempt under section 501(c)(3) of the Code. The organization was formed to provide investment services on a fee basis exclusively to organizations exempt under section 501(c)(3) but was not controlled by any of the participants. The ruling denies exemption based in section 502 because providing investment services for a fee is a trade or business ordinarily carried on for profit which would constitute unrelated trade or business if carried on by any of the tax-exempt organizations on whose behalf it operates.

Rev. Rul. 71-529, 1971-2 C.B. 234, concludes that a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code. In this instance, most of the operating expenses of the organization, including the costs of the services of the investment counselors and the custodian banks, are paid for by grants from independent charitable organizations. The fees charged represented less than 15% of the total cost of operations.

FIN: [REDACTED]

Rev. Rul. 72-369, 1972-2 C.B. 245, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code since the provision of such services is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize the activity as charitable. Furnishing these services at cost lacks the donative element necessary to establish this activity as charitable.

Rev. Rul. 81-29, 1981-1 C.B. 329, holds that an organization operating a computer network to enable its member libraries to exchange bibliographic information is exempt under section 501(c)(3) of the Code. The organization did not provide other services, such as routine administrative functions, to member libraries. Members include libraries or universities and other entities exempt under section 501(c)(3), and libraries of states and federal agencies as well as libraries of business entities. The ruling holds that the computer network makes useful bibliographic information available to researchers and thus advances education without regard to whether it limits its services to members. Rev. Rul. 74-614 amplified.

An organization seeking a ruling recognizing its tax exempt status must establish that it will satisfy the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc. v. United States, supra. The existence of more than a substantial nonexempt purpose will preclude exemption. See Better Business Bureau of Washington, D.C., Inc. v. United States, supra. As emphasized by the Supreme Court in United States v. Wells Fargo Bank, supra, qualification for exemption must be proven unambiguously.

The information you have submitted shows that you are similar to a cooperative purchasing organization for your members. The services which you are providing include negotiating with vendors for discounted telecommunication services for your members. These services are conducted by a for profit company through an agreement. There is nothing in the agreement, nor have you submitted any other information, which established that you have contacted for other than a commercial or cost savings endeavor entered into by unrelated tax exempt organizations.

You referred to PLR 92489026 in which you indicated the Internal Revenue Service ruled that facilitating access to electronically stored data and making more information available on-line furthered its exempt educational purpose of increasing the access of the general public to information. Their activities were substantially related to the exempt purpose of advancing education. However, your activities are providing cooperative purchasing of telecommunications services to unrelated members. Providing discounted telecommunications is not an educational activity.

[REDACTED]  
[REDACTED]

You also indicated the for-profit entity in PLR 9249026 is like [REDACTED] and does not adversely affect your organization's claim to exempt status.. However, your relationship is unlike the relationship because your Agreement allows a substantial private benefit to [REDACTED]

You referred to G.C.M. 32242 (1962) in which an organization formed by several section 501(c)(3) organization for the purpose of formulating and administering education testing programs on their behalf. The court concluded the organization did not qualify for exemption because it was operating in competition with business from which it realizes a substantial part of its income. You are similar in that you may receive a substantial part of your income from fees by contract with [REDACTED].

You referred to G.C.M. 38587, (1980) citing Revenue Ruling 72-369, 1972-2 C.B 245, confirmed that an organization which carries on a trade or business which would ordinarily be taxable does not satisfy the test for exemption merely because it conducts its activities on behalf of other exempt organization. You further indicated, where education is consolidated to achieve greater efficiency and economy, the consolidation does not cause the activity to become any less educational in character. You have not shown how your consortium is specifically providing educational activities for members. Your organization is composed of loosely related tax exempt organizations receiving services that are commercial in nature.

You cited Rev. Rul 74-614, 1974-2 C.B. 164 to illustrate cooperative organizations performing exempt educational activities qualify under section 501(c)(3). To qualify for exemption under section 501(c)(3) an exempt organization must be organized and operated "exclusively" for charitable, educational or religious purposes. The activities listed in your application are the promotion; marketing and assisting members to received discounted telecommunications services. You have not shown these activities are an "insubstantial" part of the organization's activities.

You referred to G.C.M's 37935 (1979) and 38050 (1979), which indicate that cooperative organizations performing exempt educational activities qualify under sections 501(c)(3). You have not shown that providing telecommunications are an exempt educational activity or that all of your members are performing exempt educational activities.

You cited that you are similar to the organization described in Council for Bibliographic and Information Technologies v Comm, supra because the organization provides services for the participating members for a nominal fee and are essential to education. However, your members are not charged fees, but enter into an agreement with a for-profit entity to receive services. In Council, the organization's largest amount of support is from fees assessed for the use of services; such fees were based on operating costs. The Petitioner retained a portion of the volume discount for equipment purchased through it. You are similar in that your Founding

Members receive support from the program volume. Your participating members receive services in a commercial manner by contracting with [REDACTED]. The fact that your services are solely for exempt organizations is not sufficient to characterize your activities as charitable or education with the meaning of section 501(c)(3) of the Code.

Based on these facts, you are not operated in a manner similar to the organizations described in Council For Bibliographic and Information Technologies v Comm, Rev Ruls 74-614, 81-29, supra, because your activities do not directly further your exempt purposes by providing an essential part of education for related tax exempt educational organizations. The services are commercial in nature and represent a "substantial" part of your activities.

You are similar to the organizations described in Rev. Rul. 71-529 and B.S.W. Group, Inc., supra, in that your primary activity is providing commercial services for unrelated exempt organizations, an activity that is not charitable, or educational.

Section 502 of the Code was enacted to clarify that merely because profits are paid over to an exempt parent or parents, such an organization will not qualify for exemption. Unless the commercial services being provided are integral to the successful operation of an exempt organization and provided only to the parent and its structurally related affiliates, recognition of exemption is precluded. To establish that an organization can come within this exception, a parent-subsidiary relationship or a similar organizational connection must be found. Exempt organizations are not related merely because they engage in the same type of exempt activities.

It is clear from the information submitted that there is no parent - subsidiary or similar strong relationship between all your Founding Members or Participating Members. The relationship with your Founding Members and Participating Members is merely a cooperative endeavor with each organization paying a membership fee for services received. In addition, the relationship between yourself and the non-establishing organization you receive services from is purely contractual. The Founding Members act as an agent for the organization with [REDACTED]. You cite common membership in other organizations as a basis for establishing a close tie between members. However, common membership in other associations does not provide the parent-subsidiary or similar relationship required to come within this exception to section 502 of the Code.

Having concluded that you are operated for nonexempt commercial purposes and that you do not limit your services to a tax-exempt parent and its affiliates, we further conclude that you are similar to the organization denied exemption in Rev. Rul. 69-528. Like that organization, you are engaged in a business that is not exempt under section 501(c)(3) of the Code. Your activities are a trade or business ordinarily carried on for profit and would constitute unrelated trade or business if carried on by

any of the tax exempt organizations on whose behalf you operate. Accordingly, section 502 precludes exemption under section 501(c) (3).

Your Agreement with [REDACTED] allows an impermissible private benefit under section 501(c) (3). You have ceded effective control over your services to [REDACTED] regarding the [REDACTED] process. You stated safeguards were built into the [REDACTED] process to make sure that the private benefit requirements of Code section 501(c) (3) are satisfied by the evaluation committees made up of representatives from the Founding Members. This oversight does not ensure that [REDACTED] will operate for a charitable purpose or remove the fact that only this for profit entity will conduct all your activities. Your relationship with [REDACTED] is similar to Redlands Surgical Services, v. Comm, supra. The organization will have an independent economic interest and has no obligation to put charitable purposes ahead of profit-making objectives. As in Redlands, supra, your agreement does not state any mutually agreed-upon charitable purposes or objective.

In our telephone conversation of [REDACTED], your power of attorney indicated the private benefit to [REDACTED] to be quantitatively incidental. Based on the above facts, you have not established the private benefit to [REDACTED] to be "insubstantial".

Lastly, an organization may establish exemption by providing services that are essential to the operation of another exempt organization or group of exempt organizations. Thus, in Chart Inc., supra, and Council for Bibliographic and Information Technologies, supra, courts determined that the services being provided were unique and essential to the daily functioning of the member organizations and qualified for exemption under section 501(c) (3). In contrast, however, the court in Nonprofits' Inc. Alliance, supra, determined that providing insurance at stable prices was not essential to the day-to-day operation of the member exempt organizations and did not advance the reason for which the member organizations were recognized as exempt. The court concluded that providing insurance to unrelated exempt organizations did not go to the essence of running each of the member organizations nor constitute an activity which would normally be performed by the member organizations.

Your organization does not directly provide services, but indirectly provides services through a commercial management or bidding company, [REDACTED]. You have not established that these services are unique and essential to the operations of your members. We conclude that the services you provide are similar to those provided by Nonprofits' Inc. Alliance, supra. They are not unique and essential to the day-to-day operation of your members and do not advance the reason for which any of your members are recognized as exempt but are commercial in nature.

You do not meet the requirements of section 501(c) (3) since your activities are not exclusively charitable, religious or education. Your activities are similar to cooperative purchasing organizations. Based on the

information submitted we conclude that you do not qualify for recognition of exemption under section 501(c)(3) because more than an insubstantial part of your activities do not a further charitable or educational purposes. Your activities constitute trade or business that would be unrelated trade or business if performed by any one of your members for the others and preclude exemption by virtue of section 502.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

[REDACTED]  
[REDACTED]

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Director, Exempt Organizations

Enclosures:

Publication 892  
Form 6018